IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS,

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

REPLY OF APPELLEE THE BOARD OF EDUCATION OF THE COUNTY OF KENT AND THE INDIVIDUAL APPELLEES AS MEMBERS THEREOF TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

PAUL O. STRAWHECKER
740 Old Kent Building
One Vandenberg Center
Grand Rapids, Michigan 49502

GEORGE R. COOK
Suite 111-G Waters Building
Grand Rapids, Michigan 49502

Attorneys for Appellee The Board of Education of the County of Kent and the Individual Appellees as Members Thereof

INDEX

CASES CITED

STATUTES CITED

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 430

JAMES SAILORS, ET AL., APPELLANTS;

v.

THE BOARD OF EDUCATION OF THE COUNTY OF KENT, ET AL., APPELLEES.

On Appeal from the United States District Court for the Western District of Michigan, Southern Division

---

REPLY OF APPELLEE THE BOARD OF EDUCATION OF THE COUNTY OF KENT AND THE INDIVIDUAL APPELLEES AS MEMBERS THEREOF TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

The Solicitor General assumes to speak in "the interest of the United States in these cases" [Brief, page 6]. What is the interest of the United States? The question whether the Court will concern itself with the composition of local

units of government is fundamentally one of political philosophy on which American citizens may very well disagree.[1]

Will this Court assume that constitutionally apportioned legislatures "will fail to correct any malapportionment that may exist in its arms, agencies and instrumentalities, when corrective measures are needed" [Circuit Judge Harry Phillips in *Strickland v Burns*, 256 F Supp, page 837]?

In 1966 the Michigan legislature adopted Act No. 261 [Act No. 261 PA 1966; MSA § 5.359, et seq; approved by the Governor July 12, 1966; effective March 10, 1967], which provides in part that [MSA § 5.359(1)]:

> "On or before May 15, 1967, and in subsequent years within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 35 county supervisor districts as nearly of equal population as is practicable and within the limitations of § 2. * * *"

---

[1] Current disagreement on political philosophy may be illustrated by the fact that the legislatures of 32 states [as of March 28, 1967] have passed resolutions in one form or another calling a Constitutional Convention for the purpose of submitting a constitutional amendment to the states which would secure to the people the right of some choice in the method of apportionment of one house of a state legislature on a basis other than population alone. See Appendix A. The week of March 26, 1967, the major newspapers of the Country commented on the discovery that only 2 more states were necessary to implement Article V of the Constitution. Of course, the newspaper comments varied widely. By way of illustration only, we attach the comment appearing in the New York Times issue of Sunday, March 26, 1967 as Appendix B and the comment appearing in the Wall Street Journal issue of Tuesday, March 28, 1967 as Appendix C.

This act was passed by the Michigan legislature without mandate from the Supreme Court of Michigan and that Court at this writing is still deadlocked [see *Brouwer v Kent County Clerk*, 377 Mich 616, 141 NW 2d 98 and *Muskegon Prosecuting Attorney v Klebering*, 377 Mich 666, 141 NW 2d 120].

The City Commission of the City of Grand Rapids, Michigan, is now in the process of reapportionment on a one man, one vote basis, pursuant to charter amendment unanimously submitted by the Commission and voted by the people of the city, without the mandate of any court.[2]

We refer again to the fact that the Michigan School Code [MSA, § 15.3294 (2 and 3)] does "authorize popular election of county school board members upon a favorable referendum vote within the county." See Appellants' Brief, page 14, Note 20 and Appendix E, pages 6a and 7a. Appellants' complaint that this provision is meaningless should be addressed to the Michigan legislature and not to this Court.

Time has not permitted us to assemble data as to what the several states have done, without court mandate, to reapportion local units on a population basis. We earnestly believe that such reapportionment can better be accomlished by the elected representatives of the people or the people of the units themselves than by the mandate of any court, if corrective measures are needed.

---

[2]Attached as Appendix D are extracts from the unanimously adopted resolution of the Grand Rapids City Commission submitting to the people the question of reapportionment of the city wards on an equal population basis.

February 21, 1966, the people of the city adopted the proposal by a vote of 12,877 to 5,176, more than 2 to 1. Attached as Appendix E is the report of the board of canvassers.

We urge again that "the cases before the Court do require 'reflection on political theory' " [Brief for Appellees The Board of Education of the County of Kent and the Individual Appellees as Members Thereof, at page 7].

CONCLUSION

The order entered below dismissing the Complaint, as amended, should be affirmed [R 223, 224].

Respectfully submitted,

PAUL O. STRAWHECKER
740 Old Kent Building
One Vandenberg Center
Grand Rapids, Michigan 49502

GEORGE R. COOK
Suite 111-G Waters Building
Grand Rapids, Michigan 49502

Attorneys for Appellee The Board of Education of the County of Kent and the Individual Appellees as Members Thereof

APPENDIX A

STATES WHICH HAVE PASSED RESOLUTIONS CALLING A CONSTITUTIONAL CONVENTION

	State	Date Passed
1.	Alabama	Feb, 1965
2.	Arizona	Jan, 1965
3.	Arkansas	Jan, 1965
4.	Colorado	Mar 14, 1967
5.	Florida	Jun, 1965
6.	Georgia	Mar, 1965
7.	Idaho	Mar, 1965
8.	Indiana	Mar 7, 1967
9.	Illinois	Mar 13, 1967
10.	Kansas	1965
11.	Kentucky	Sep, 1965
12.	Louisiana	May, 1965
13.	Maryland *	Mar, 1965
14.	Minnesota	May, 1965
15.	Mississippi	Jul, 1965
16.	Missouri	1965
17.	Montana	1965
18.	Nebraska	Mar, 1965
19.	Nevada	1965
20.	New Hampshire	Apr, 1965
21.	New Mexico	Feb, 1965
22.	North Carolina	May, 1965
23.	North Dakota	Mar 3, 1967
24.	Oklahoma	Jan, 1965
25.	South Carolina	Feb, 1965
26.	South Dakota	Feb, 1965
27.	Tennessee	Feb, 1965
28.	Texas	Feb, 1965
29.	Utah	Jan, 1965
30.	Virginia	Dec, 1964
31.	Washington	Apr, 1963
32.	Wyoming	Mar, 1963

* Resolution to rescind Maryland petition defeated in the State Senate March 27, 1967.

APPENDIX B

(New York Times, Sunday, March 26, 1967)

DIRKSEN'S END RUN

A New Attack On One Man, One Vote

The United States Government, which spends $425-million each year to publicize itself and is kibitized by about 1,000 Washington newsmen, is easily the most highly publicized institution in the world.

It is capable of producing columns of copy over the antics of a playboy Congressman, reams of information on the machinations of a spendthrift Senator and solemn White House pronouncements about the number of surviving whooping cranes.

Thus it was more in surprise than in anger that official Washington reacted last week to the news that Senator Everett McKinley Dirksen had very nearly hatched a plot to amend the Federal Constitution without anyone in Washington finding out.

Article V of the Constitution states that constitutional amendments can be proposed by a two-thirds vote of both houses of Congress—the way all of the present 25 amendments have been proposed.

But it also provides that "on the application of the legislatures of two-thirds of the several states, [Congress] shall call a convention for proposing amendments." Some scholars say Congress must call the convention; others say the decision is up to Congress. Congress would also decide how the convention would be constituted, and where and when it would meet. If any amendments were proposed, three-fourths of the states would still have to ratify them.

States Approve

An intriguing feature of the state legislative method is that the various state actions capable of vitally affecting

the Government in Washington can be taken without its knowledge.

Perhaps that was why the disclosures last week that 32 of the required 34 states had already approved petitions calling for a constitutional convention to modify the Supreme Court's one-man, one-vote rule caught Washington off guard, although the move had been three years in the making.

Late in 1964 the General Assembly of the States, an annual convention of state officials sponsored by the Council of State Governments, published a model petition for use by state legislatures that wished to call for constitutional convention on reapportionment.

It called upon Congress to convene the convention to propose an amendment to permit one house of a state legislature to be apportioned on a basis other than population. This would modify the Supreme Court's rule that both houses must be apportioned according to population.

The American Farm Bureau Federation threw its well-oiled lobbying mechanism behind the campaign, and by the fall of 1965, 26 states had approved this resolution.

Since two states—Washington and Wyoming—had passed resolutions in 1963 seeking to preclude the Federal courts from apportioning either house of a state legislature, the convention backers could claim 28 applications—only six short of the number necessary to ask Congress to convene the first constitutional convention since 1787.

By the time the legislatures convened again this winter, everybody, including the Farm Bureau Federation, had forgotten that the campaign was within six states of its goal—except Senator Dirksen.

He said nothing, but last month members of his staff began to turn up in such diverse places as Denver and Juneau, where they persuaded the legislatures to consider the Senator's resolution.

Lawyer Enters Picture

By mid-March, the legislatures of four more states—North Dakota, Indiana, Colorado and Illinois—had passed resolutions, and in two legislatures—Iowa and Alaska—the resolutions had passed one house and were pending in the other.

At this point, Arthur J. Freund, a St. Louis lawyer who follows such campaigns as a hobby, became concerned that the campaign had taken on new life, yet nobody could tell him who was responsible. He began to write law professors, journalists, civil liberties leaders and others, insisting that something was afoot.

By last weekend, groups in Washington were beginning to compare notes. Although no single group knew of more than 28 petitions, when the League of Women Voters, the Council of State Governments and the Library of Congress's legislative reference service put their lists together, they came up with Senator Dirksen's 32.

With the spotlight on his campaign, Senator Dirksen began to encounter opposition. Senators William Proxmire and Joseph D. Tydings said 26 of the petitions were void because the legislatures that passed them were malapportioned. It was widely reported that liberal Senators would filibuster, if necessary, to prevent Congress from calling the convention. A move began in the Maryland Legislature to rescind its resolution.

Many observers thought Senator Dirksen had no real hopes of calling a convention, and was using the campaign to build up momentum for another move to propose the amendment in Congress.

But with all the conversation in Congress, still nobody suggested keeping track of such campaigns in the future.

APPENDIX C

(The Wall Street Journal, Tuesday, March 28, 1967.)

DEFENDERS OF DEMOCRACY

It's amusing to note some of the hand-wringing now going on over this discovery: Petitions by only two more state legislatures would complete the two-thirds majority necessary to convene a Constitutional convention to set aside the Supreme Court's one-man, one-vote edict.

In 1964, it may be recalled, the Supreme Court ruled that both houses of all legislatures must be apportioned fundamentally on the basis of population. Senator Dirksen advocated an amendment limiting this doctrine to one house of bicameral legislatures, a proposal entirely consistent with American tradition and practice.

The proposed amendment fell a few votes short of the required two-thirds majority in the Senate, and its proponents turned to an alternate method of pushing it. The Constitution provides that Congress shall call a convention to propose amendments upon application by two-thirds of the state legislatures. In any case, amendments must also be ratified by three-fourths of the states through their legislatures or, at Congress' option, through special conventions.

Legislatures in 32 of the required 34 states have passed petitions asking for a convention on the Dirksen amendment. The League of Women Voters is upset. Senator Tydings, who led the Senate fight against the proposal, is looking for grounds whereby Congress could deny the states' petitions. The New York Times says the idea of a convention is "at best mischievous and at worst reckless." The Washington Post labels it an "assault on the Constitution."

What makes this somewhat amusing is the method used to outlaw the tradition the amendment seeks to restore. Six Supreme Court Justices decided, 175 years after the Constitution was adopted, that it countermanded state consti-

tutions, some of them antedating the Federal charter itself, which envisioned legislative apportionment reflecting historical or geographical factors in addition to population.

Now, the notion that the Supreme Court is the ultimate curator of the Constitution is well established and often useful. But it is nowhere spelled out in the Constitution itself. The procedure the Dirksen's amendment's proponents are using, on the other hand, is there for all to see in Article V. In other words, opponents of the convention are arguing it is somehow unfair to use the Constitution's explicit and solemn procedures to correct the judgment of precisely six men.

Opponents also raise the specter of a runaway convention, saying it might not restrict itself to the one amendment specified in the petitions from the legislatures. Even if a majority of the convention did overstep its mandate, of course, the necessity of ratification would preclude any amendments the people do not favor.

All of which leaves the strong suspicion that the fuss is really caused by a feeling that the people, if left to their own devices, might do some things the hand-wringing defenders of democracy do not approve.

APPENDIX D

PROCEEDINGS OF THE CITY COMMISSION CITY OF GRAND RAPIDS, MICH.

OFFICIAL

Regular Session, Tuesday Afternoon
November 30, 1965

• • •

16822. Your Committee on Reapportionment recommends the adoption of the attached resolution.

Bernard Barto, Berton Sevensma, Edward C. McCobb, Committee on Reapportionment.

COM. BARTO moved the adoption of the following resolution:

WHEREAS, Section 3 of Title I of the Charter of the City of Grand Rapids provides:

"Ward Divisions. Sec. 3. The City of Grand Rapids shall be divided into three wards, as follows:

"First Ward, all that part of the City lying west of the center of Grand River; Second Ward, all that part of the City lying east of the center of Grand River and north of the center line of Wealthy Street; Third Ward, all that part of the City lying east of the center of Grand River and south of the center line of Wealthy Street."

and

WHEREAS, under Section 2 of Title II of the Charter of the City of Grand Rapids two Commissioners are elected from each of the three wards to the City Commission, and

WHEREAS, there is a large disparity between the total number of people living in each ward under the existing ward boundaries which results in unequal representation for each ward in the City Commission, and

WHEREAS, it is deemed to be in the interests of good government to district and apportion the three wards of the City so the population of such wards shall be as nearly equal as possible and each ward shall be equally represented on the City Commission, Now, therefore

BE IT RESOLVED that the City Commission of the City of Grand Rapids, pursuant to the authority granted by Act 279 of the Public Acts of Michigan of 1909, as amended, and by a 3/5ths vote of its members elect, does hereby propose that the following amendment to the Charter be submitted to the electors of the City for adoption or rejection at an election for said purpose to be held in conjunction with the Municipal Primary Election on Monday, February 21, 1966:

That said Charter be amended by amending Section 3 of Title I, so that Section 3 will read as follows:

Ward Divisions. Sec. 3. The City of Grand Rapids shall be divided into three wards, as follows:

First Ward, all that part of the City lying west of the center of Grand River; Second Ward, all that part of the City lying east of the center of Grand River and north of the center line of Wealthy Street; Third Ward, all that part of the City lying east of the Center of Grand River and south of the center line of Wealthy Street.

Within one year after the adoption of this Charter Amendment, and thereafter within one year after the official total population count of each federal census of the City of Grand Rapids is available, the City Commission shall by ordinance district and apportion the three wards of the City of Grand Rapids so the population of such wards shall be as nearly equal as possible. Such wards shall be as compact and contiguous as possible, considering natural and established boundaries and streets.

BE IT FURTHER RESOLVED that said election be held Monday, February 21, 1966, and that in accordance with Act 279 of the Public Acts of 1909, as amended, the proposed amendment be submitted to the electors of the City at said election and that the Clerk shall:

1. Forthwith transmit a copy of the proposed amendment to the Governor of Michigan for his approval and a copy to the Attorney General for his approval of the form in which that proposition shall be presented to the electors.

2. Do and perform all acts required by the Charter and the laws of the State relative to the giving of notice of such election and of the registration of electors therefor, and

3. Make all necessary arrangements for the registration of electors for said election and for the holding of said election.

BE IT FURTHER RESOLVED that the question shall appear on the ballot as follows:

"CITY OF GRAND RAPIDS CHARTER AMENDMENT TO PROVIDE THAT THE CITY COMMISSION SHALL DISTRICT AND APPORTION THE CITY'S THREE WARDS ON AN EQUAL POPULATION BASIS WITHIN ONE (1) YEAR AND THEREAFTER WITHIN ONE (1) YEAR AFTER THE FEDERAL CENSUS OF THE CITY IS AVAILABLE.

"THE PURPOSE OF THIS AMENDMENT IS TO AUTHORIZE AND REQUIRE THE CITY COMMISSION TO DISTRICT AND APPORTION THE THREE WARDS OF THE CITY SO THE POPULATION OF SUCH WARDS SHALL BE AS NEARLY EQUAL AS POSSIBLE.

"SHALL SECTION 3 OF TITLE I OF THE CHARTER BE AMENDED AS ABOVE PROVIDED?

YES ( )
NO ( )

• • •

Adopted.

Yeas: Coms. Anderson, Barto, McCobb, Sevensma, Sypniewski, Worst, The Mayor—7. Nays—0.

• • •

On motion of Com. Sevensma, Commission adjourned at 2:46 p.m.

R. STANTON KILPATRICK
City Clerk

APPENDIX E

PROCEEDINGS OF THE CITY COMMISSION CITY OF GRAND RAPIDS, MICH.

OFFICIAL

Regular Session, Tuesday Evening
March 1, 1966

• • •

REPORT OF THE BOARD OF CANVASSERS

The Board of Canvassers appointed to tabulate and canvass the statement of votes returned by the Board of Election Inspectors of the several Wards and Precincts thereof of the City of Grand Rapids, Michigan, for the Municipal and School District Primary and Special Election held in said City, February 21, 1966, respectfully report that we have made a careful canvass of such statements with the following results:

• • •

PROPOSAL NO. 1

CITY OF GRAND RAPIDS CHARTER AMENDMENT TO PROVIDE THAT THE CITY COMMISSION SHALL DISTRICT AND APPORTION THE CITY'S THREE WARDS ON AN EQUAL POPULATION BASIS WITHIN ONE (1) YEAR AND THEREAFTER WITHIN ONE (1) YEAR AFTER THE FEDERAL CENSUS OF THE CITY IS AVAILABLE.

The purpose of this amendment is to authorize and require the City Commission to district and apportion the three wards of the City so the population of such wards shall be as nearly equal as possible.

Shall Section 3 of Title I of the Charter be amended as above provided?

Yes received	12,877
No received	5,176

Whereupon we certify that "Yes" having received a majority of the votes cast on said Proposal, the same is declared to have carried.

* * *

On motion of Com. Sevensma, Commission adjourned at 8:10 p.m.

R. STANTON KILPATRICK
City Clerk